

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

103

CR No.2036 of 2018

Date of decision:18.2.2020

Rekha Sharma

... Petitioner

versus

Ramesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Saurabh Bhardwaj, Advocate,
for the petitioner

...

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner challenges the order of the learned trial court allowing the second application filed by the respondent-defendants under the provisions of Order 7 Rule 11 of the CPC, thereby directing the petitioner-plaintiff to pay court fee *ad valorem* on an amount of Rs.1.26 crores, that being the amount that she is stated to have admitted in her testimony that she is claiming from the respondent-defendants.

The suit is one that seeks rendition of accounts and thereafter a decree of mandatory injunction, directing the respondent-defendants “to pay the amount of share to the petitioner-plaintiff @ Rs.15,000/- per sq. yard of the sale of land made by them, along with upto date interest at the rate of 18% per annum from the due date till actual payment. The costs of the suit may also be awarded to the petitioner-plaintiff, in the interest of justice.”

Thus, as a matter of fact, in the suit itself she asked for an almost defined amount, as the rate at which the final amount is to be determined was given to be Rs.15,000/- per sq. yard, which was to be

multiplied with the total area of land sold by the respondent-defendants (as per the case of the petitioner-plaintiff), with the share claimed by her in the suit land therefore to be 'taken out'. Thus, actually only very simple arithmetic was to be applied to come to a specific figure that the petitioner sought as her share.

However, upon an application filed earlier under Order 7 Rule 11 of the CPC by the respondent-defendants, that was dismissed by the trial court on 21.9.2016, holding that the actual amount as was sought to be paid to the petitioner-plaintiff by the respondent-defendants (as per the case of the plaintiff), was still to be determined after evidence was adduced on both sides, as no specific amount had been mentioned by the plaintiff in her suit, as was due to her even after rendition of accounts. Consequently, it was held as follows:-

“Thus, only after evidence has been led, the court can arrive at an ascertained amount and thereafter, direct the respondent/plaintiff to affix *ad valorem* court fee on the said amount, after framing a proper issue regarding court fee in this regard.”

While passing the aforesaid order, a judgment of this court in Anand Sarop vs. Arun Kumar, 2001(4) RCR (Civil) 183 was cited by the learned trial court.

Learned counsel for the petitioner has pointed out that in the said case, this court had held that where there is an unliquidated claim in a suit for rendition of accounts, only 'formal court fee' is sufficient, subject to payment of *ad valorem* court fee on the entire amount as decreed at the

final stage.

Consequently, his argument is that as per the ratio of the said judgment, it is only at the final stage in a suit seeking rendition of accounts, that court fee, *ad valorem*, would be payable, i.e. only after the amount to be paid is decreed.

He thereafter submits that, consequently, the court fee would be payable only at the time of issuance of a preliminary decree qua rendition of accounts, if the petitioner succeeds in her suit.

However, the impugned order has been passed upon another application under Order 7 Rule 11 of the CPC having been filed, after the petitioner-plaintiff had testified as PW2, with the trial court holding in the impugned order that in her cross-examination before the court she had stated that an amount of Rs.1.26 crores was due from the respondent-defendants, to her.

Learned counsel has produced in court today a photocopy of the evidence led before that court (in Hindi) in which it is stated that “.....*RAKAM BAARE PATA LAG GAYA KEE MERI EK CRORE CHHABBIS LAKH KUTCH RUPAIY RAKAM BANTI HAI...*”.

Thereafter, she is shown to have stated that “they had stated that the entire land had been sold off.” (Learned counsel submits that the reference to the word 'they' is actually to the respondent-defendants).

Hence, the trial court in the impugned order has held that once the petitioner (plaintiff) had in her own statement stated that she was seeking an amount of Rs.1.26 croers from the respondent-defendants, obviously that amount stood determined and consequently she was required

to pay court fee *ad valorem* on that amount.

At the time when this petition had initially come up for hearing on 27.3.2018, that notice of motion had been issued on a contention raised by learned counsel for the petitioner that the second appeal was filed without disclosing the decision on the first application.

Consequently, while issuing notice of motion, the operation of the impugned order had been stayed to the effect that the trial court was directed to proceed with the case without insisting upon the payment of court fee *ad valorem* (on the aforesaid amount).

Thereafter, the respondent-defendants, despite service, chose not to appear before the court and were eventually proceeded against *ex parte* on 22.11.2018, which order they had never sought to get recalled, till date.

Today learned counsel for the petitioner reiterates what he had argued at the initial stage, to the effect that the impugned order had been passed without considering the fact that earlier an order on an identical application had been rejected, with that order never challenged and therefore it had become final.

He relies upon a judgment of the Supreme Court in Y.B.Patil and others vs. Y.L.Patil, AIR 1977 (SC) 392, on the basic issue of *res judicata* operating once an order has become final.

He next submits that as a matter of fact the amount of Rs.1.26 crores as is stated to be due to the petitioner-plaintiff, in terms of her testimony, is actually the total amount due in the two suits that she has filed and the trial court has therefore misinterpreted the testimony, taking the said

amount to be due only in the suit in question in the present *lis*.

He further submits that in any case the entire evidence has not been led before that court, and consequently the first order passed rejecting the application under Order 7 Rule 11 of the CPC, has still to become operative.

Having considered the arguments, as regards the question of the trial court not having been seized of the first order, that contention is obviously to be rejected at the thresh hold, in view of the fact that the trial court in paragraph 5 of the impugned order has specifically referred to the previous order dismissing the application, but thereafter holding that it was observed therein that court fee *ad valorem* could be determined after framing of a proper issue with regard thereto, upon which issues were so framed on 17.10.2016, with the plaintiff having then led her evidence and in her cross-examination having stated that she had come to know that Rs.1.26 crores was due from the respondent-defendants, which naturally was the amount which she was claiming, and would therefore be required to pay court fee *ad valorem* accordingly.

Thus, I do not actually agree with the learned counsel in entirety that it was only after complete evidence to be led by the parties that the amount due to the petitioner-plaintiff could be determined as per the earlier order, once she herself has raised a demand for a specific amount, then that amount would be taken to be her 'demand' in the suit, in which she has stated that the amount due to her was as fell to her share at the rate of Rs.15,000/- per sq. yard of the specific amount of land sold.

Actually in the opinion of this court, as already said earlier, that

amount could have been determined at the outset itself, because once a specific rate per acreage was demanded and the acreage sold was obviously not in dispute and further, she had also claimed a specific share of the land to be hers, the calculation was very simple arithmetic calculation to be arrived at, which was however not done.

Be that as it may, the suit obviously having progressed to a great extent without the court fee having been paid *ad valorem*, and the respondent-defendants having chosen not to oppose this petition, it is disposed of with a direction that the learned trial court would first determine as to whether the amount of Rs.1.26 crores as has been claimed by the petitioner-plaintiff is actually the amount which she has claimed in the suit in the present *lis*, or in both the suits that are stated to be pending, (as per the statement of the learned counsel), and whether the said amount would also be commensurate with what she had demanded in her plaint, in terms of the rate at which the calculation of the market price should be made, for a specific amount of land (out of which her share would be the specific amount).

Thereafter, after determination of the specific amount has been settled, court fee, *ad valorem*, be paid by her.

18.2.2020
pk

(**AMOL RATTAN SINGH**)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No